

City of Burien, Washington

Shoreline Advisory Committee

Meeting #9 Summary

October 28, 2009

4:00pm

1. ATTENDANCE

SAC Members present	Technical Staff Present	Interested Parties Present
Brian Bennett Jim Branson Bruce Berglund Victoria Hall Patrick Haugen Rebecca McInteer Kim Otto Don Warren Joe Weiss George Yocum	David Johanson Liz Ockwell Steve Roemer Karen Stewart	Chestine Edgar Robert Edgar Tanya Engeset

2. CONFIRM AGENDA

1. The agenda was confirmed

3. REVIEW AND APPROVE MEETING #9 SUMMARY

1. There was a discussion regarding the meeting no. 8 summary. The Committee had the following discussion:
 - Don Warren stated a correction to bullet #2. The last sentence in the paragraph should be removed from the summary because there was additional conversation about meet #8 minutes. There was consensus to have that section removed.
 - Don Warren commented that the minutes do not accurately reflect his statement in bullet #3. He would like to add that along with protecting the shoreline from no net loss, "there shall be no degradation to water quality, ecological function, and flora and fauna in Lake Burien." There was consensus to amend the summary to reflect his statements.
 - The word 'policy' should replace 'regulation' in item (4) 7 bullet #1. There was consensus to amend the summary to reflect the correction.
 - Brian Bennett discussed the process for revisiting any policy or regulation issues brought up at the meeting and that the committee should continue with the summary review and move on to review of Chapter 5, and then come back to any items that should be revisited.
2. There was a consensus to accept meeting summary as corrected.

4. ADMINISTRATIVE AND SHORELINE PERMIT PROCEDURES, CHAPTER V:

Brian Bennett led the discussion of Chapter IV.

1. 20.35.001 Purpose and Applicability

- Don Warren commented that the last sentence in this section refers to amendments. He stated he thought this process was an amendment. David Johanson responded that technically this update is an amendment, but the term in this case refers to future amendments that will be reviewed and adopted into the SMP.
2. **20.35.005 Authority and Rule of Liberal Construction**
- Don Warren asked what the 'rule of strict construction' meant. David Johanson responded that it means that the rules are implemented as specifically written, however in this case the rule of liberal construction applies. It means that master program should be implemented with an emphasis on the goals and policy objectives of the shoreline management act and decisions should be weighted with that emphasis in mind.
3. **20.35.010 Shoreline Permit Types and Review Procedures**
- Don Warren asked how many types of land use decisions the city has. David Johanson responded that there are 5 types of land use decisions and explained each one. There are administrative decisions, and types 1 thru 4 land use decisions. He briefly summarized the process for each type of decision.
 - Bruce asked what 'Consolidated Permit Review' referred to under item #3. David Johanson responded that there are multiple types of review, and when there is more than one review on a specific project, the consolidated review lumps all review processes into one decision.
 - Kim Otto commented that language should be added to the SMP requiring a wet stamp and review to be done by a Washington State Licensed Engineer. David Johanson responded that staff will consider that language however it is usually is addressed in administrative application requirements. Either a place will be found in the SMP to indicate the requirement, or it will be done administratively on an application.
 - Kim Otto commented under item #8 that a variance cannot be issued for a use. David Johanson agreed however he noted that in this section, use pertains only to the bulk, dimensional and performance standards of the SMP relating to a development. Rebecca McInteer asked if the word 'use' could possibly be changed to 'activity'. David Johanson responded that staff will look into it.
 - Don Warren commented that he would like notice for all land-use applications to be sent to all property owners on Lake Burien. David Johanson responded that currently, the notices are sent to properties within 500' of the project site, a land-use sign is installed, and it is published in the paper. Kim Otto commented that Lake Burien should not be an exception to the noticing requirements or exempted from any requirements. Jim Branson suggested that property owners could possibly be notified by reach. Rebecca McInteer commented that there are already enough ways to provide notice to surrounding property owners about a project and it should not be changed.
4. **20.35.020 Substantial Development Permits for Limited Utility Extensions and Bulkheads**

- Don Warren asked in 1.b.3 what 'shorelines of the state' means. David Johanson responded that he believes they are a defined term in State law.
5. **20.35.025 Exemptions from Shoreline Substantial Development Permits**
- Don Warren asked what the word 'matrix' was referring to under item #2. David Johanson responded that the matrix it refers to is in Chapter IV of the SMP. He stated that he will add a better code reference tying it specifically back to the matrix in Chapter IV.
 - Don Warren asked where the appeal process went after the City has made a decision. David Johanson responded that this section refers to the appeal language in the BMC and that after an administrative decision has been made and if appealed, it will then go to the Hearing Examiner. If another appeal is filed, the decision will then be heard in Superior Court.
 - Under item #3, Don Warren commented that there are no specific code citations regarding what regulations are being reviewed for a project. This occurs in other sections, but does not appear here. David Johanson responded that there may be more than one set of regulations that is referred to when reviewing a project. Rebecca McInteer commented that it would not be beneficial to narrow the review to a specific section as this may limit the number of resources that can be used in review.
 - In section 4.A., Don Warren commented that the dollar amount for an exemption seems low. David Johanson responded that this amount is established by the State.
 - In section 4.K., Don Warren asked if there are any examples of restoration projects completed in Burien. David Johanson responded that there have been some restorations done on Miller Creek.
 - Don Warren asked what would happen if the Shoreline Administrator made a mistake in issuing a decision. Rebecca McInteer commented that the Shoreline Administrator has the SMP to use as guidelines for their review. Karen Stewart said that the Shoreline Administrator can always work with Department of Ecology or WA State Department of Fish and Wildlife prior to making a decision.
6. **20.35.035 Shoreline Conditional Use Permits**
- Don Warren asked if a person higher ranking than the Shoreline Administrator reviews the conditional use permits. David Johanson responded that conditional use permits are sent to the Department of Ecology for review.
 - Don Warren questioned if water quality in Lake Burien was addressed in the SMP. Karen Stewart responded was that is addressed because the shoreline jurisdiction encompasses the entire lake (aquatic portion plus 200' landward of OHWM).
7. **20.35.040 Shoreline Variance Permits**
- Kim Otto commented that the word 'uses' should be stricken from this section because a variance cannot be issued for a use. A suggestion was made to replace the word 'use' with 'development'. David Johanson responded that staff would need to look into this to make sure the wording would not conflict with language in State law. Karen Stewart suggested

that under the applicability section, item #1, a statement be added with specific language stating variances cannot be granted for a use. A consensus was reached to add this language which staff will craft.

- Don Warren asked under item 3.b if a more specific reference could be added than the words 'previous section'. David Johanson responded that this could be done.

8. 20.35.045 Alteration and Reconstruction of Nonconforming Structures

- David Johanson discussed a staff proposed refinement in the language under item #5 that would allow smaller expansions of existing homes to use a less intensive review process. Language could be added to this section that states if less than 500 square feet of roof area is added, the project may be approved by a substantial development permit. A consensus was reached by the committee to add the language as follows:

Expansion. Enlargement or expansion of single family residences less than 500 square feet of roof area may be approved by a shoreline substantial development permit subject to the criteria listed in this section. Enlargement or expansions of a single family residence greater than 500 square feet of roof area by the addition of space to the primary structure or by the addition of normal appurtenances as defined in 20.40.000 that would increase the nonconformity and/or encroach further into areas where new structures or developments would not be allowed under this Master Program may be approved by a shoreline conditional use permit if all of the following criteria are met:

- Pat Haugen if the additional language added under item #5 would be exempt from notification. David Johanson responded that the revised language does not exempt required notification; just that the Department of Ecology would not have the final approval under the new language.

9. 20.35.055 Effective Date and Duration of Shoreline Permits

1. Bruce Berglund asked why construction cannot commence for 30 days after the shoreline permit has been approved. David Johanson responded that the 30 day requirement is for Department of Ecology to perform their review and allow for any appeal periods to close.

10. 20.35.060 Compliance and Enforcement

1. David Johanson stated that this language was written by the Burien City Attorney. He used State law, the BMC, and examples from other jurisdictions to write this section.
2. Don Warren asked under section C, items 2, 3, and 4, how many days a fine can occur for. David Johanson stated that it is addressed in item #7, but staff will look further into the issue and get a number associated with the fines. Rebecca McInteer responded that the violator has a chance to come to the City about the violation and the City then works with the violator on the issue.

3. Don Warren asked what 'sua sponte' means. David Johanson responded that 'sua sponte' means the hearing examiner can take action on his/or her own without a request being filed.
 4. Bruce Berglund stated that new evidence should not be allowed to be admitted multiple times during the decision process. David Johanson responded that if a decision reaches a hearing, this is the usually the only time when evidence can be submitted. Once the hearing is closed no new information can be submitted. Then the Hearing Examiner reviews the record that was established. It was noted that sometimes there is new information provided at a hearing that the administrative reviewer did not consider.
 5. Don Warren asked what would happen if the City did something that was a violation on City property. David Johanson responded that the City maintains and should continue to maintain good communication between departments and this typically avoids that problem. If that should occur there are other sources of oversight such as the Department of Ecology and Fish and Wildlife who can also step in and help with an issue.
- 11.20.35.065 Revisions to Shoreline Permits**
1. Don Warren asked if in section 3, if a revision to a permit may only be authorized after the permit has expired. David Johanson and Karen Stewart responded that further in the section, timeline and process is discussed and indicates when revisions may be authorized.
- 12. Other**
1. Chestine Edgar commented that the SMP does not talk about protecting critical freshwater habitat, only critical saltwater habitat. She requested that the term should be added wherever there was reference to critical saltwater habitat. David Johanson responded that he is unsure if there is a state accepted definition that exists for critical freshwater habitat. Staff and the consultant will look into it and ask Ecology if they have a term. He also stated that a term could possibly be added to the definitions, but he would need to check with Ecology first.
- 5. NEXT STEPS:**
1. David Johanson discussed that although there are some issues that have not been resolved; there are other steps in the process where comments can be made. David Johanson encouraged the SAC to stay involved and provide comments throughout the rest of the process.
 2. David Johanson expressed great thanks to the committee for all their hard work and volunteering to be a part of crafting Burien's first real shoreline master program.
 3. Brian Bennett thanked the committee for their participation and recognized the challenge of working with such a large committee; they all should be congratulated for a job well done.
 4. An open house has been tentatively scheduled for November 30th at City Hall.

The meeting concluded at 6:05pm.